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March 13, 2002

**BY HAND**

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

Re: **Fiber Technologies Networks, L.L.C., D.T.E. 01-70**

Dear Secretary Cottrell:

On March 8, 2002, Fiber Technologies Networks, L.L.C. ("Fibertech") filed with the Department of Telecommunications and Energy ("Department" or "DTE") a letter requesting the right to reply to any opposition of Shrewsbury's Electric Light Plant ("SELP") to Fibertech's March 1, 2002 Motion for Summary Judgment.<sup>1</sup> In its letter, Fibertech requested that any replies to SELP's opposition be filed by Monday, April 1, 2002.

SELP opposes Fibertech's latest request and respectfully requests that the Hearing Officer rule that Fibertech and limited participants in this case not be allowed to submit replies or responses to SELP's yet-to-be-filed opposition.

SELP opposes Fibertech's March 8, 2002 request for a number of reasons. As an initial matter, there is no provision in the Department's procedural rules which allows for replies to oppositions to motions for summary judgment. The Department's rule with respect to motions for summary judgment is set out at 220 CMR 1.06(6)(e). This particular procedural rule states that "[T]he presiding officer shall afford other parties a reasonable time to respond in writing, and may, in his or her discretion, permit oral argument on the motion." 220 CMR 1.06(6)(e) does not allow for replies to the

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<sup>1</sup> The Hearing Officer has established March 22, 2002 as the deadline for responses to Fibertech's Motion for Summary Judgment. See March 1, 2002 Hearing Officer Memorandum.  
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non-moving party's opposition to a motion for summary judgment and does not appear to afford the Hearing Officer the discretion to allow such a reply.

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In issuing his March 1, 2002 memorandum that established March 22, 2002 as the deadline for responses to Fibertech's Motion for Summary Judgment, the Hearing Officer has appropriately and fully discharged his responsibilities under the applicable Department regulation.

Moreover, to the extent that Fibertech appears to argue that Fibertech's March 1, 2002 Motion for Summary Judgment should be treated in the same manner as any general motion filed in the course of a Department proceeding, that argument also must fail. While it is the case that the Hearing Officer may have the discretion to allow for "replies to replies" in the case of general motions filed pursuant to 220 CMR 1.04(5)(d), that regulation does not directly apply where the Department's rules include a specific regulation – 220 CMR 1.06(6)(e) discussed above – relative to motions for summary judgment.

Simply put, a motion for summary judgment is not a typical motion and neither the Department's rules nor common civil practice treat it as such.<sup>2</sup> And, while Fibertech argues that the "Department customarily allows for briefing on the merits, and this custom is appropriately followed where the pending motion that may entirely or partially resolve the case on the merits," Fibertech glaringly fails to provide the Department with a single example of a case in which the Department allowed a reply to an opposition to a motion for summary judgment. Fibertech has utterly failed to demonstrate any good cause for deviating from the rules in this case so as to allow Fibertech to have the "last word" on the matter of its motion for summary judgment.

In the event that the Hearing Officer grants Fibertech's request to file a reply, SELP respectfully respects that it be permitted to file a reply to any opposition filed by Fibertech should SELP file a cross-motion for summary judgment.

Very truly yours,

Diedre T. Lawrence

cc: Service List

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<sup>2</sup> See, e.g., Superior Court Rule 9A, Motions and Interlocutory Matters.  
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